



Stephanie Rawlings-Blake
Mayor

PLANNING COMMISSION

Wilbur E. "Bill" Cunningham, Chairman



Thomas J. Stosur
Director

STAFF REPORT

April 15, 2010

REQUEST: City Council Bill #10-0434/Stormwater Management

For the purpose of modifying the provisions governing stormwater management to comply with new requirements of State law; requiring the development, review, and approval of phased plans for stormwater management; establishing certain minimum control requirements to manage stormwater by using environmental site design to the maximum extent practicable; requiring certain site design techniques and certain structural and nonstructural practices; requiring certain reports and inspections; providing for certain exemptions, waivers, and variances; imposing certain fees; defining and redefining certain terms; correcting, clarifying, and conforming related language; providing for a special effective date; and generally relating to the protection, maintenance, and enhancement of the public health, safety, and welfare through the management of stormwater.

RECOMMENDATION: Amend and Approve: The amendments will reflect the changes from the Maryland Department of the Environment "Emergency Regulations" dated March, 2010. This recommendation is being made with the understanding that the Department of Public Works and the Planning Department will continue to review and evaluate the City's approved PUD projects to ascertain if they are appropriately addressed under CCB #10-0434. In the event PUDs are not appropriately addressed under the 'grandfathering' provisions or other SWM regulations, the City (DPW) will petition MDE with amended regulations to address Baltimore's unique PUD situation.

STAFF: Kenneth Hranicky

PETITIONER: Administration (Department of Public Works)

SITE/GENERAL AREA: Citywide

HISTORY

- Ordinance 78-869 - Establishing a mechanism to enforce provisions of a Baltimore City Erosion and Sediment Control Manual, and to impose fines for violations of requirements of the Manual, under the jurisdiction of the Department of Public Works, Article 26 – Streets and Highways of the Baltimore City Code.
- Ordinance 84-84 - Establishing a Baltimore City Stormwater Management Program under the jurisdiction of the Department of Public Works, Article 26 – Streets and Highways of the Baltimore City Code.

- Ordinance 87-1130 – Amendment to the Stormwater Management Program to incorporate the Chesapeake Bay Critical Area regulations; placed Stormwater Management under the jurisdiction of the Department of Transportation.
- 2000 Code Revision - Placed the Stormwater Management Program in a new Article 7 – Natural Resources (Subtitles 21 through 26), under the jurisdiction of the Department of Public Works.
- Ordinance 02-367 – A major overhaul of Stormwater Management for the purpose of revising the laws governing stormwater management; requiring the development, review, and approval of stormwater management plans; establishing certain minimum control requirements; requiring certain structural and nonstructural practices; requiring certain reports and inspections; requiring easements for certain purposes; providing for certain exemptions, waivers, and variances; requiring certain permits; imposing certain fees; establishing certain maintenance requirements; defining certain terms; establishing certain penalties; and generally relating to the protection, maintenance, and enhancement of the management of stormwater.

CONFORMITY TO PLANS

The proposed legislation is found to be consistent with the following element of the Baltimore City Comprehensive Master Plan: LIVE Goal 2: Elevate the Design and Quality of the City's Built Environment. PLAY Goal 3: Increase the Health of Baltimore's Natural Resources and Open Spaces for Recreation and to Improve Water Quality. Furthermore, this legislation is consistent with the adopted City Sustainability Plan: Pollution Prevention Goal #3: Ensure that Baltimore water bodies are fishable and swimmable.

ANALYSIS

This report is an addendum to the February 18th, March 18, and April 1, 2010, staff reports. This item was continued at the Planning Commission February 18th, March 18, and April 1, 2010, hearing. This report summarizes the outcomes in Annapolis and explains staff's recommendations.

The updating of Baltimore's stormwater management regulations, required State Stormwater Management Act of 2007, is necessary for Baltimore to retain its authority over managing stormwater runoff. In recent weeks there has been a flurry of debate surrounding the impacts of the State's new stormwater legislation, set to take effect May 4, 2010. Participants have included the State legislature, Maryland Department of the Environment (MDE), local jurisdictions, the Maryland Association of Counties and the Maryland Municipal League, and stakeholders in the development and environmental advocacy communities. The State legislation requires that MDE approve City's stormwater management code. There has been an ongoing of dialogue between the City's Department of Public Works (DPW) and MDE that is still currently underway.

On April 6th, the House-Senate Committee on Administrative, Executive and Legislative Review (AELR) approved MDE's Emergency Stormwater Regulations. The Emergency Regulations are materially similar to the consensus agreement that had become HB 1125. Discussions with DPW, and the Mayor's representative in consultation with State delegate

Macintosh, it is understood that the City's interests were represented during discussions on HB 1125 and the 'emergency regulations'. The 'emergency regulations' were adopted by Administrative, Executive and Legislative Review Committee and HB 1125 was withdrawn. The 'emergency regulations' became effective on April 7, 2010, and will last for six months, during which time MDE must propose final regulation changes and provide for public input.

DPW is pursuing amendments included in the 'emergency regulations'. Those amendments include *Administrative Quantitative* and *Qualitative* Waivers. The Administrative Waivers allow for the 'grandfathering' of projects that meet certain criteria. A quantitative and qualitative waiver may be granted for phased projects with already constructed stormwater management facilities that were designed to meet the 2000 standards. If the 2009 regulatory requirements (2007 SWM Act requires changes to the stormwater management regulations go into effect, requiring local jurisdictions to make changes to local laws by May 2010) cannot be met for future phases constructed after May 4, 2010, all reasonable efforts to incorporate ESD in future phases must be demonstrated. In addition, quantitative and qualitative waivers may be granted to infill developments that are located in priority funding areas that meet certain minimum criteria. These waivers must be reviewed by MDE 30 days after issuance.

Many Planned Unit Developments (PUDs) are phased developments. PUDs go through an extensive and comprehensive review process in the City that requires a considerable investment of time and resources by the development community. This issue is address in §23-5 Phased Development Projects. DPW may grant a quantitative and qualitative control waiver for phased development projects if the stormwater system has been constructed and the development has demonstrated that the regulatory requirements for stormwater adopted by MDE in 2009 cannot be met for:

1. Future phases of a phased development project that are constructed after May 4, 2010; and
2. The applicant demonstrates that all reasonable efforts were made to incorporate environmental site design into these phases of the development.

It is Planning Staff's understanding, as conveyed by the Mayor's Office, with verbal clarification from the State delegate, that with the inclusion of the 'emergency regulation', waiver flexibility for PUDs are reasonably provided for in CCB #10-0434. However, to ensure that there are no unintended consequences regarding PUDs, Planning will continue to work with DPW to evaluate and assess the impacts to the City's approved PUDs over the coming weeks. This analysis will answer the question regarding the impact the new regulations will have on existing PUDs. If negative impacts are discovered, Staff will work with DPW and the Administration to proposed appropriate changes to City and State legislation.

In addition to CCB #10-0434, DPW will still have to follow up on the follow two additional matters:

1. The writing of the 2010 Baltimore City Stormwater Design Guidelines. Planning will work with DPW on these guidelines. Staff will also work with DPW to appropriately incorporate PUDs into the Baltimore City Stormwater Design Guidelines and waiver provisions.

2. Coordinating DPW's involvement on the Site Plan Review Committee.

CCB #10-0434 has been written to meet the requirements of the Stormwater Management Act of 2007 while addressing Baltimore's urban environment challenges. This effort is also in line with the City Master Plan and Sustainability Plan along with other initiatives that are cleaning our waters. The details are an ongoing effort but CCB #10-0434 does provide the legal framework for the City to move forward while meeting the requirements of the SWM 2007 Act. Planning staff supports DPW's proposed amendments incorporating the grandfathering and waiver provisions, so the City may maintain a competitive position with other jurisdictions in encouraging redevelopment and development and increasing the City tax base.

Staff recommends approval of the bill, with the recommended amendments for grandfathering and redevelopment discussed above.

In advance of today's hearing on this matter, staff mailed 90 letters to a diverse set of stakeholders, including community associations, environmental organizations and members of the development community.

Thomas J. Stosur
Director